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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-311

12 **GERARDO CUEVAS III, A.K.A.**  
13 **GERALDO CUEVAS, A.K.A.,**  
**GERARDO CUEVAS**  
14 1224 Sandcastle Way  
Manteca, CA 95336  
15 Registered Nurse License No. 633787

**A C C U S A T I O N**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),  
22 Department of Consumer Affairs.

23 **Registered Nurse License**

24 2. On or about March 4, 2004, the Board issued Registered Nurse License Number  
25 633787 to Gerardo Cuevas III, also known as Geraldo Cuevas and Gerardo Cuevas  
26 ("Respondent"). The registered nurse license was in full force and effect at all times relevant to  
27 the charges brought herein and will expire on December 31, 2011, unless renewed.

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## STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct....,

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

7. California Code of Regulations, title 16, section 1444, states, in pertinent part:

A conviction or act shall be considered to be substantially related to the functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code section 11160.

8. Penal Code section 11160, states, in pertinent part:

(d) For purposes of this section, "assaultive or abusive conduct" shall include any of the following:

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation in violation of Section 288a.

**COST RECOVERY**

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**BACKGROUND**

10. A criminal case was filed in the San Joaquin County Superior Court, Case No. MF031966A in which Respondent was held to answer to four (4) felony counts of Penal Code section 288, subdivision (a) (lewd and lascivious acts with a child under age 14), all felony counts; and, one (1) count of Penal Code section 311.4, subdivision (c) (use a minor under 18 years to engage in posing or modeling alone or with others), a felony, as more particularly set forth in the paragraphs below. The case is still pending at this time.

**11. Drug**

"Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13).

**FIRST CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct)**

12. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a) on the grounds of unprofessional conduct, in that Respondent committed acts constituting unprofessional conduct, as follows:

a. Between on or about March 7, 2006, to March 6, 2007, A.D., a minor female, who, during that time period was 12 or 13 years of age, was called to a back bedroom at Respondent's residence where Respondent and R. Wolfe, another adult male, were undressed from the waist down. R. Wolfe instructed A.D. to get on top of him. R. Wolfe then had sexual intercourse with A.D. Immediately thereafter, Respondent engaged in sexual intercourse with A.D.

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b. Between on or about March 7, 2006, to March 6, 2007, Respondent was at R. Wolfe's residence. While there, Respondent pushed A.D. into the kitchen. Respondent engaged in sexual intercourse with A.D. while she was on her hands and knees, and R. Wolfe watched with a camera.

c. In or about late 2006, at Respondent's residence, R. Wolfe instructed A.D. to perform oral sex on him and at the same time Respondent had sexual intercourse with A.D. During this incident there was a video camera on the coffee table.

d. Between on or about March 7, 2006, to March 6, 2007, while at Respondent's new residence, A.D. performed oral sex on Respondent.

e. On each occasion set forth in subparagraphs a through d, above, Respondent and R. Wolfe smoked marijuana with A.D. On two of those occasions, Respondent provided the marijuana.

## SECOND CAUSE FOR DISCIPLINE

**(Possession of a Controlled Substance in Violation of Law; Self-Administration)**

13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in Code section 2762, subdivision (a), as follows:

a. Between 2006 and 2007, Respondent possessed the controlled substance, marijuana, in violation of Code section 4060.

b. Between 2006 and 2007, Respondent furnished the controlled substance marijuana to A.D. a minor.

c. Between 2006 and 2007, Respondent self-administered the controlled substance marijuana.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 633787, issued to Gerardo Cuevas III, also known as Geraldo Cuevas and Gerardo Cuevas;

2. Ordering Gerardo Cuevas III, also known as Geraldo Cuevas and Gerardo Cuevas to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED:

1/29/10

*Louise R. Bailey*

LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

LOUISE BAILEY, M.Ed., R.N.,  
Interim Executive Officer,  
BOARD OF REGISTERED NURSING,  
DEPARTMENT OF CONSUMER AFFAIRS,  
STATE OF CALIFORNIA,

Petitioner,

v.

GERARDO CUEVAS III, R.N.,

Registered Nurse License No. 633787,

Respondent.

Agency No. 2010-311

OAH No. 2010010194

**DECISION ON PETITION FOR  
INTERIM SUSPENSION ORDER**

This petition was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on January 19, 2010, in Sacramento, California.

Karen R. Denvir, Deputy Attorney General, represented the Interim Executive Officer Louise Bailey, M.Ed., R.N. (petitioner), Board of Registered Nursing (Board).

Russell S. Humphrey, Attorney at Law, appeared on behalf of Gerardo Cuevas III (respondent), who was also present.

Petitioner filed a Petition for Interim Suspension Order (Petition) on January 6, 2010. On January 6, 2010, pursuant to Business and Professions Code section 494, subdivision (d), a noticed hearing on the Petition was held, affidavits and other documents were received in evidence, oral arguments were presented, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. On March 4, 2004, the Board issued Registered Nurse License No. 633787 to respondent. The license will expire on December 31, 2011, unless renewed.

Respondent is currently practicing nursing in the emergency room of Kaiser Hospital in Manteca, California.

2. On January 9, 2009, respondent was arrested by the Manteca Police Department on charges of sexual misconduct with a minor, including lewd and lascivious acts upon a child. This followed a complaint and investigation leading the arresting authority to believe that respondent had engaged in sexual acts with a juvenile victim on multiple occasions, videotaped some of those acts, and provided marijuana to the minor victim.

On October 14, 2009, in the same criminal case (San Joaquin County Superior Court Case No. MF031966A), respondent was held to answer to the following charges: (1) four felony counts of Penal Code section 288, subdivision (a) (lewd and lascivious acts with a child under age 14); and (2) one felony count of Penal Code section 311.4, subdivision (c) (videotaping the sexual conduct of a minor).

3. Complainant contends the above matters warrant issuance of an Interim Order suspending respondent's registered nurse license because he cannot safely practice nursing in any capacity at this time. Respondent maintains that he is innocent, denies engaging in sexual acts with a juvenile, and points to his solid, if not excellent, record of employment as a registered nurse.

4. Petitioner submitted a number of documents in support of this Petition, all of which were admitted into evidence without objection. These include: 1) the declaration of Manteca Police Detective Steve Beermann, 2) the certified transcript of respondent's preliminary examination on October 14, 2009, 3) Manteca Police Department Case Report No. 2008-00025126, and 4) certified copies of criminal court records for both respondent and his codefendant, Robert Jason Wolfe. Detective Beermann also testified at hearing.

5. Detective Beermann has been assigned, since 2005, to the Manteca Police Department's Child Abuse/Sexual Assault Division. He has received training in the investigation of child abuse and sexual assault complaints. He has over 13 years experience with the Manteca Police Department. Detective Beermann was assigned to investigate complaints by a minor child (A.D.) that she had been sexually molested by respondent. A.D. described four occasions when respondent and she engaged in sexual intercourse. She was age 13 when this first occurred in 2006 or 2007. She first reported these actions to her mother in August 2008, and a complaint was subsequently filed with the Manteca Police Department on August 28, 2008. Detective Beermann began his investigation in December 2008.

6. As part of Detective Beermann's investigation, a search warrant was issued for items in codefendant Wolfe's residence. Several DVDs, VHS tapes, loose tapes and a computer were recovered pursuant to this search warrant. Materials recovered confirmed matters reported by A.D. For example, A.D. had earlier described being exposed to pornographic videos, methamphetamine and marijuana when she was with respondent and Wolfe. The recovered DVDs and videotapes were largely pornographic. There were additional video frames showing respondent, Wolfe and A.D. together smoking marijuana.

A.D. had also reported that respondent had engaged in sex with Wolfe's spouse, while Wolfe videotaped them. One of the recovered videos showed this, further corroborating A.D.'s account and proving her to be an accurate and reliable reporter of events involving respondent and Wolfe.

7. A.D. reported that she engaged in sexual intercourse on numerous occasions with Wolfe. She kept her panties after one of these instances and provided them to Manteca Police. Sperm on her panties was positively matched to codefendant Wolfe. On July 29, 2009, Wolfe pled guilty to one count of violating Penal Code section 288, subdivision (a) (lewd acts with a minor), and was sentenced to eight years in state prison, and ordered to register as a sex offender. This further demonstrates that reports made by A.D. that she engaged in sexual intercourse with adult males are credible.

8. A.D. testified at respondent's October 14, 2009 Preliminary Examination. Respondent was represented by Mr. Humphrey. He had opportunity to cross-examine A.D. The transcript of the Preliminary Examination was accordingly received and considered as direct evidence in this hearing. A.D. described having sexual intercourse or oral sex with respondent on four separate occasions as summarized below:

a. On an unknown date in 2006 or 2007, A.D. arrived at respondent's apartment with Wolfe. A.D. was age 13 at the time. She told respondent that she was age 13 and that she was in seventh or eighth grade. Respondent was approximately age 32 at the time. Wolfe and respondent went into a back bedroom to talk, and then called A.D. to join them. Both respondent and Wolfe were unclothed from the waist down. Wolfe engaged in sexual intercourse with A.D., and then respondent had sexual intercourse with her. Wolfe and A.D. then left respondent's apartment.

b. On a second date in 2006 or 2007, A.D. was at Wolfe's apartment when respondent came over. Respondent began pushing A.D. into the kitchen. A.D. dropped her pants to her knees, got down on her hands and knees and respondent had sexual intercourse with her while Wolfe watched with a camera.

c. On a third occasion, most likely in late 2006, A.D. and Wolfe were at respondent's apartment. Wolfe had A.D. perform oral sex on him, and at the same time respondent had sexual intercourse with her. During this incident, there was a video camera on the coffee table in front of the couch. A.D. later observed respondent pulling out tape from the videocassette after it had been removed from the camera.

d. A fourth incident occurred in 2006 or 2007, when respondent was moving into a new home. A.D. and respondent were alone there and she performed oral sex on respondent.

9. A.D. testified that on each occasion respondent and Wolfe would smoke marijuana with A.D., and that respondent provided marijuana on two occasions.



10. Detective Beermann interviewed respondent at the Manteca Police Department on January 9, 2009. He admonished respondent of his rights and respondent agreed to talk. Respondent confirmed that he knew that A.D. was school age, either primary or secondary. Detective Beermann asked respondent if he had sex with A.D. Respondent refused to answer. Respondent told Detective Beermann several times that there was no rape or force. However, each time that Detective Beermann asked respondent if he had sex with A.D., he refused to answer. Respondent stated that "the tape speaks for itself." Detective Beermann understood this to mean that sexual contact between respondent, Wolfe and A.D. was recorded on tape. Respondent also indicated that he could not provide accurate details about the past because he was drunk and smoked marijuana back then.

11. At hearing, respondent denied having sexual intercourse with A.D. He acknowledged that he knows A.D., that he knows she is under age 18, and that he is friends with both Wolfe and his wife, Monica. Respondent declined to elaborate further, asserting his Fifth Amendment rights.

12. Respondent is a staff nurse II with Kaiser Hospital Manteca. He works in the Kaiser emergency room, serving as the permanent relief charge nurse. When he was first arrested, Manteca Police arrived at his workplace. Respondent subsequently advised his two Kaiser supervisors about the charges filed against him. No job restrictions were imposed by his employer.

There are between four and seven nurses working in the Kaiser emergency room at any given time. They work independently of each other because of the demands on their time. On occasion, registered nurses are alone with minor patients in closed rooms. Nurses may work in pairs during certain sensitive procedures, or as an emergency situation may dictate. In most cases, minor patients are accompanied by a parent or guardian in the emergency room.

13. Emergency room nurses are mandated reporters of child or sexual abuse. Child victims of sexual abuse are seen in emergency room settings, and this may be the first indication that a child has been physically or sexually abused. Registered nurses have access to private personal and confidential information about minor children that others cannot access.

14. Respondent has a good to excellent employment history with Kaiser Hospital Manteca. Linda Olds is also a Kaiser emergency room relief charge nurse. She is a registered nurse and has known respondent since 1999. She testified that he is an excellent and dependable employee. Ms. Olds opined that his time efficiency is excellent, his contact with patients is appropriate and that his knowledge and skill level are at the top of his field. These qualities are particularly valued in an emergency room context where highly qualified and capable nurses are critical to successful team management and treatment of patients.

Respondent is a skilled emergency room nurse and in his position as a charge nurse is responsible for "traffic control" of emergency room patients and activities.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 494, subdivision (a), provides that an interim order may be issued suspending a licensee upon a showing that: (1) the licensee "has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity"; and (2) permitting the licensee to continue to engage in the licensed activity "would endanger the public health, safety, or welfare."

2. Business and Professions Code section 2761 provides that the Board may take disciplinary action against a licensed nurse for unprofessional conduct, which includes engaging in criminal conduct that is substantially related to his license.

3. As set forth in Findings 8 through 10, there is credible evidence that respondent has engaged in multiple illegal acts, including lewd acts with a child (Penal Code section 288), videotaping lewd acts with a child (Penal Code section 311.4), furnishing a controlled substance to a minor (Health and Safety Code section 11380), and possession of marijuana (Health and Safety Code section 11357, and Business and Professions Code section 4060). Engaging in illegal conduct substantially related to the license is a violation of Business and Professions Code section 2761, subdivision (a).

4. Per respondent's own admissions (Finding 10), he used marijuana which is a violation of Business and Professions Code section 2762.<sup>1</sup>

5. Petitioner has also made the requisite showing required by Business and Professions Code section 494, subdivision (a), that permitting respondent to continue to engage in the licensed activity would endanger the public health, safety, or welfare.

Petitioner correctly notes that registered nurses hold professional licenses issued by the State of California that are seen by the public as an expression of trust, indicating that the licensee has been determined to be of sound character and competence. A registered nurse license enables the licensee to have access to situations and information that he or she would not otherwise have. As noted in Findings 12 and 13, respondent is practicing as a relief charge nurse in an emergency room. He has access to minor patients and their personal and confidential information. On occasion, he is responsible for treating child victims of sexual abuse who are brought into the emergency room. He is a mandate reporter of such abuse.

6. The criminal allegations are extremely serious. Following the preliminary examination on October 14, 2009, he was held to answer to four felony counts of Penal Code section 288, subdivision (a), lewd and lascivious acts with a child. Respondent acknowledges that he knows A.D. is under age 18. Although he denied engaging in sexual intercourse with A.D. at hearing, he made no such denial when he was earlier asked the same

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<sup>1</sup> Business and Professions Code section 2762 provides that the Board may take disciplinary action against a licensed nurse for illegally possessing, using, or furnishing of a controlled substance.

question repeatedly by Detective Beermann. (Finding 10.) There is video showing him smoking marijuana with A.D.

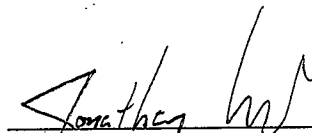
7. Respondent has a very good work history with Kaiser, and is thought of highly by his supervisor and peers. This has been taken into consideration.

8. Petitioner has provided substantial direct evidence as proof of respondent's unprofessional and sexual misconduct in violation of the Business and Professions Code, as well as of his furnishing and use of illegal drugs. Petitioner has demonstrated that respondent does pose a present threat to the public health, safety and welfare due to his repeated and egregious sexual misconduct. No practice or employment restrictions short of suspension will provide adequate protection to the public. Consequently, an interim suspension order should issue and remain in place until the Board has filed an accusation and that accusation has been heard in accordance with Business and Professions Code section 494, subdivision (f), or this matter is otherwise resolved.

#### ORDER

The Petition for Interim Suspension Order is GRANTED. Registered Nurse License No. 633787 issued to respondent Gerardo Cuevas III is suspended pursuant to Business and Professions Code section 494.

DATED: January 21, 2010

  
\_\_\_\_\_  
JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

JAN 25 2010